Office-Supreme Court, U.S.
FILED
SEP 4 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-986

In the Supreme Court of the United States

OCTOBER TERM, 1980

THE NORTH HAVEN BOARD OF EDUCATION,
Petitioner

v.

TERREL H. BELL, ET AL.

THE TRUMBULL BOARD OF EDUCATION,
Petitioner

v.

UNITED STATES DEPARTMENT OF EDUCATION and
LINDA POTZ

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' APPENDIX

PETITION FOR WRIT OF CERTIORARI: FILED DECEMBER 16, 1980
WRIT OF CERTIORARI: GRANTED FEBRUARY 23, 1981

TABLE OF CONTENTS

Page

A. Excerpts from the record in *North Haven Board of Education*:

Complaint 2

Exhibit B to complaint 9

Exhibit C to complaint 14

Exhibit D to complaint 16

Excerpt from Plaintiff's Answers to Defendant's Request for Admissions 18

Defendants' Statement of Material Facts as to Which There is No Genuine Issue 21

Plaintiff's Statement of Material Facts 24

B. Excerpts from the record in *Trumbull Board of Education*:

Complaint 26

Exhibit A to complaint 33

Plaintiff's Objections to Defendant Potz's First Set of Interrogatories to Plaintiff 43

Plaintiff's Motion for Summary Judgment 46

Federal Defendant's Response to Plaintiff's Motion for Summary Judgment 48

District Court's Denial of Defendant Potz's Motion to Compel Answers to * * * Interrogatories of December 29, 1978 49

Motion for Summary Judgment of Defendant Linda Potz 50

Affidavit of Linda Potz Evanko 52

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No.: H78-165

[Filed May 26, 1978]

NORTH HAVEN BOARD OF EDUCATION, consisting of Stewart Fritts, Beverly Goodman, William Kennedy, Nancy Meikle, Margaret Pearce, Frank Porto, Anthony Rescigno, Jacquelyn Bechir, and Faye Clarke, PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., Individually and in his official capacity as United States Secretary of Health, Education and Welfare, and

JOHN BYNOE, Individually and in his official capacity as Director, Office for Civil Rights, Region I, United States Department of Health, Education and Welfare, and

MARIA C. MONTALVO, Individually and in her official capacity as Chief, Elementary and Secondary Education Branch, Office for Civil Rights, Region I, United States Department of Health, Education and Welfare, DEFENDANTS

COMPLAINT

INTRODUCTORY STATEMENT

This is an action for declaratory and injunctive relief against the Defendants for threatened termination of federal financial assistance to North Haven Board of Education (hereinafter the "Board").

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 5 U.S.C. §§ 701-706 and 28 U.S.C. §§ 1331, 1361, 2201

and 2202. The amount in controversy exceeds $10,000 exclusive of interest and costs.

PARTIES

2. Plaintiff, North Haven Board of Education, is a duly elected municipal body and state agency of the Town of North Haven and of the State of Connecticut, charged with the responsibility for operating all the public schools therein. Stewart Fritts, Beverly Goodman, William Kennedy, Nancy Meikle, Margaret Pearce, Frank Porto, Anthony Rescigno, Jacquelyn Bechir, and Faye Clarke are the duly elected members of said school board.

3. Defendant Joseph A. Califano, Jr. is an officer of the United States and is sued individually and in his official capacity as Secretary of Health, Education and Welfare.

4. Defendant John G. Bynoe is an officer of the United States and is sued individually and in his official capacity as Director, Office for Civil Rights, Region I, United States Department of Health, Education and Welfare.

5. Defendant Maria C. Montalvo is an officer of the United States and is sued individually and in her official capacity as Chief, Elementary and Secondary Education Branch, Office for Civil Rights, Region I, United States Department of Health, Education and Welfare.

THE ACTION

6. This is an action for declaratory judgment and injunctive relief arising under the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*, as amended, (hereafter "Title IX" or "Section 901").

7. The matter in controversy exceeds exclusive of interest and cost, the sum of ten thousand dollars, ($10,000).

8. Jurisdiction is based on 5 U.S.C. §§ 701-706 and 28 U.S.C. §§ 1331, 1336, 2201 and 2202.

9. Section 901 provides in relevant part:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . ."

10. Section 902 of Title IX provides in relevant part:

> "Each federal department and agency which is in power to extend federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guarantee, is authorized and directed to effectuate the provisions of Section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with the achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken . . ."

11. Defendant Califano's predecessor in office issued regulations entitled "Final Title IX Regulations Implementing Educational Amendments Active [*sic*] 1972 Prohibiting Sex Discrimination in Education.", 45 C.F.R. Part 86, effective July 21, 1975 (hereafter "HEW Regulations"). The Regulations have the force of law; they are in final, approved form and are currently in effect.

12. Subpart E of the HEW Regulations purports to prohibit discrimination on the basis of sex in employment, (copy attached as Exhibit "A").

13. Under Section 902, the Department of Health, Education and Welfare is empowered to investigate reported violations of Section 901 and to initiate administrative proceedings to enforce compliance if voluntary compliance cannot be secured. Refusals to comply can be sanctioned under Section 902 with the termination of federal aid for those programs affected by a school's alleged discriminatory policies.

14. By letter of January 10, 1978, the Board was notified by Defendant Bynoe that a complaint had been filed against the Board alleging sex discrimination in hiring and other terms and conditions of employment including child care leave, (copy attached hereto as Exhibit "B").

15. The Defendant requested and received a copy of the complaint that was filed on December 21, 1977 and of the amended complaint that was filed on February 7, 1978.

16. On February 7, 1978 the Plaintiff requested the Department of HEW to dismiss the charge because three district courts had ruled that HEW had no jurisdiction to regulate employment discrimination and had held such regulations invalid, void and of no effect whatsoever.

17. By letter of March 17, 1978, the Assistant Regional Attorney for HEW refused to dismiss the complaint and advised the Office of Civil Rights to pursue an investigation of compliance.

18. By letter of March 21, 1978, the Plaintiff disagreed with the position of HEW in the letter of March 17, 1978 and asked HEW to hold investigation in abeyance pending court determination in *Dove* v. *Fritts*, Civil Action No. N77-501, as that very issue of HEW's jurisdiction over alleged employment discrimination was already before a Connecticut District Court.

19. By letter of April 5, 1978, HEW refused to hold the investigation in abeyance and said that failure to provide the necessary information could lead to the district's ineligibility to receive federal funds and other sanctions.

20. By letter of April 12, 1978, the Plaintiffs again asked the Defendant to dismiss the complaint for lack of jurisdiction or at least to hold it in abeyance pending court decision.

21. By letter of April 19, 1978, Mr. Bynoe said that failure to provide the information requested left them "no other alternative but to refer this case to the Office

of the Regional Attorney for possible administrative enforcement." (Copy attached as Exhibit "C").

22. By letter of April 24, 1978, the Plaintiffs asked the Defendants to specify the nature of the enforcements proceedings.

23. On April 27, 1978 the Plaintiff received a letter from the Defendants saying "I also want to inform you that this complaint file was referred to the Regional Attorney for possible enforcement proceedings on April 24, 1978. You may still avoid enforcement action by advising your client to submit the information as originally requested." (Copy attached as Exhibit "D").

24. Compliance with the HEW demands to submit to an investigation would require considerable time and expense by the Board; it would be forced to modify its existing collective bargaining agreement which, although the Board grants paid maternity disability leave, the granting of a year's personal leave of absence is a discretionary matter for the Board alone to decide. (Article XIX, copy attached as Exhibit "E").

25. The total amounts of federal financial assistance extended to North Haven from HEW for the school year, 1975-76, 1976-77, 1977-78 were approximately $95,269, $86,905, $111,212. These amounts included $24,307.50 for special education; $65,474 for children of low income families; $14,188 under the vocational education act;

26. The termination of said federal financial assistance, as threatened, would result in the elimination or, at least, substantial curtailment of the above continuing programs which would inure to the detriment of North Haven and cause irreparable harm to it, the students and the citizens that it by law represents.

27. The foregoing threatened loss and harm to North Haven arises out of the assertion and assumption of authority by the Defendants, Califano, Bynoe and Montalvo to regulate employment practices of Brunswick [*sic*] pursuant to Sections 901 and 902.

28. The promulgation of subpart E of HEW Regulations was in excess of the statutory authority conferred by Congress in Section 902 because Section 901 protects from discrimination the students who are the participants in and the beneficiaries of federally assisted education programs and activities only.

29. The promulgation of subpart E of the HEW Regulations was inconsistent with and in violation of the provisions of the 1972 amendments to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, which grants jurisdiction and authority to the Equal Employment Opportunity Commission to regulate unlawful employment practices and in particular alleged sex discrimination in employment practices.

30. The promulgation of subpart E of the HEW Regulations was inconsistent with and in violation of the 1972 amendment to the Fair Labor Standards Act, 29 U.S.C. § 206(d), and the Equal Pay Act, which grant jurisdiction and authority to the Department of Labor to regulate certain unlawful employment practices and in particular alleged sex discrimination in pay for equal employment.

31. The application of subpart E of the HEW Regulations to regulate the general employment practices of North Haven which are applicable to employees engaged in a broad range of educational programs and activities, some of which are not federally assisted, is in irreconcilable conflict with the express limitation of authority contained in Section 901, *et seq.*, i.e. to regulate educational programs or activities receiving federal financial assistance.

32. The threatened termination of federal financial assistance to the Board for refusal to submit information on its employment practices is in excess of the authority conferred by Congress under Section 901, *et seq.* since such finding does not concern students who have been the beneficiaries under the federally funded programs.

33. Plaintiffs have no adequate remedy at law and this controversy is ripe for judicial resolutions. [*sic*].

WHEREFORE, Plaintiff demands the following relief:

1. Declaratory judgment that subpart E of Part 86, Title 45 C.F.R. and all actions and proceedings taken by Defendants with respect to this Plaintiff pursuant there [*sic*] are invalid, void and of no effect whatsoever.

2. Declaratory judgment that Defendants, Califano, Bynoe and Montalvo may not terminate or refuse to grant or continue federal financial assistance to Plaintiffs pursuant to the provisions of Section 902, 20 U.S.C. § 1681, unless said Defendants duly find that Plaintiffs federally funded programs are in noncompliance with Section 901 and valid regulations enacted pursuant thereto.

3. Preliminary and permanent injunction ordering Defendants to cease and desist from any attempt to terminate federal financial assistance to Plaintiff for alleged noncompliance with subpart E, Title 45 C.F.R. Part 86.

4. Such other and further equitable relief as justice may require.

5. Award of its costs and attorney fees.

PLAINTIFFS

By: /s/ Siegel, O'Connor & Kainen, P.C.
Its Attorneys
Office and Post Office Address
60 Washington Street
Hartford, Connecticut 06106

By: /s/ Susan K. Krell
SUSAN K. KRELL

—and—

By: /s/ Donald W. Strickland
DONALD W. STRICKLAND

Hartford, Connecticut

May 26, 1978

EXHIBIT "B"

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Region I
140 Federal Street
Boston, Massachusetts 02110

Office For Civil Rights

January 10, 1978

Mr. Delio J. Rotondo
Superintendent
North Haven Public Schools
1151 Hartford Turnpike
North Haven, Connecticut 06473

Complaint No. 01-77-0125

Dear Mr. Rotondo:

We are in receipt of a complaint alleging that the North Haven Board of Education has acted or is acting in violation of Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex by recipients of Federal financial assistance. The specific allegation deals with hiring and other terms and conditions of employment including child care leave.

Based on a court order issued by the U.S. District Court for the District of Columbia in the suit of *Adams* v. *Califano* (Civil Action No. 3095-70), procedures and timetables have been set for the handling of complaints by the Office of Civil Rights.

The investigation of this complaint must be completed within the first one hundred and five (105) days after receipt. If it is determined that a statutory violation has occurred, the respondent will be requested to take

corrective action. In the event that we are unable to agree as to the implementation of an appropriate remedy within an additional ninety (90) day period, formal enforcement action shall commence no later than thirty (30) days following the ninety (90) day period or the matter may be referred to the Department of Justice.

Please be assured that this office is committed to resolving this matter in an efficient and timely manner. Toward this end, we are requesting that you send us the information itemized on the attached sheet within 15 days of the date of this matter. We have also enclosed for your information a copy of our notification form concerning our authority to solicit information from your agency for evaluation of compliance with the laws administered by this office, the uses of such information and sanctions which may be imposed if the information is not provided.

If you have any questions, please do not hesitate to contact Caroline Chang at (617) 223-6397.

Sincerely yours,

/s/ John G. Bynoe
JOHN G. BYNOE
Director
Office of Civil Rights
Region I

Enclosure

INFORMATION REQUESTED

1. Description of hiring process
   a. Persons involved in decision-making (by position); who makes what decisions?
   b. Copy of established procedures; if not in writing, explain how the process is communicated to the decision-makers and to persons affected by it.
2. Description of criteria applied in hiring process
   a. Nature, purpose and relative weight of each criterion.
   b. A copy of written criteria; if not in writing, how are criteria communicated to decision-makers and persons affected.
3. Copy of employment application form for teaching positions.
4. Copy of collective bargain contract(s) covering teachers for period from January, 1976 to present.
5. Copy of all policies relating to granting of leaves of absence.
6. Copy of all policies relating to seniority and tenure.

OFFICE FOR CIVIL RIGHTS (OCR) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (HEW)

Recipient's Notification Form Concerning the Privacy Act of 1974

The Privacy Act of 1974, Public Law 93-579, effective on September 28, 1975, protects against the unauthorized use of personally identifiable data by any agency of the Federal Government. The following concerns the information to be collected from your district in evaluating the compliance with equal opportunity laws administered by OCR.

1. AUTHORITY FOR SOLICITATION OF INFORMATION: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in any program or activity receiving Federal Financial Assistance. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex under federally-assisted education programs or activities. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal Financial assistance. Under 45. C.F.R. §§ 80.6(c) and 80.7(c), OCR has responsibility for ascertaining compliance by those local educational agencies subject to these statutes.

2. PRINCIPAL PURPOSE FOR WHICH INFORMATION IS TO BE USED: Pursuant to a complaint, the Office For Civil Rights is conducting an investigation of your district to determine compliance with some or all of the three legal authorities named in paragraph (1), above. The information collected will be analyzed by the Office For Civil Rights in order to determine compliance.

3. ROUTINE USES OF THE INFORMATION: In addition to ascertaining compliance with the three legal authorities mentioned above, this information is used to advise your institution of its compliance status. The other routine use of this data would be to secure approval for and to bring administrative or judicial enforcement proceedings where compliance cannot be secured by voluntary means

Recipients Notification Form Concerning the Privacy Act of 1974

4. EFFECTS OF NOT PROVIDING THE REQUESTED INFORMATION: Sanctions may be imposed on your district if it does not provide information requested by this Office. Failure to supply information pertinent to the investigation of the complaint may result in action to enforce the assurance froms and/or Federal contract provisions that your district is obligated to comply with pursuant to the appropriate authority cited above.

Absent the consent of the complainant, OCR will not disclose to anyone any personally identifiable data about the complainant, except to the extent that such disclosure involves a routine use described above, and except as required by law. Under the Freedom of Information Act and the HEW regulation implementing that Act (45 C.F.R. Part 5), no such information is required to be disclosed to the public until resolution of compliance status; and during and after the conclusion of the investigation § 5.71 of the HEW regulation precludes disclosure to the public of information (1) of a personal and private nature, or (2) having a commercial, financial, or professional value, which is, in fact, confidential, and in which the person providing the information has a proprietary interest.

EXHIBIT "C"

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Region I
140 Federal Street
Boston, Massachusetts 02110

Office For Civil Rights
(617) 223-6397

April 19, 1978

Ms. Susan K. Krell
Siegel, O'Connor & Kainen, P.C.
60 Washington Street
Hartford, Connecticut 06106

Re: Complaint No. 01-77-0125

Dear Ms. Krell:

This is in response to your letter dated April 12, 1978. As we indicated to you in our letter dated March 17, 1978, we disagree with your conclusion that the decisions made by the United States District Courts from Michigan, Kansas, and the State of Washington preclude investigations by our office of possible noncompliance with Title IX by the North Haven Connecticut Board of Education. Your request that we dismiss Ms. Dove's complaint for lack of jurisdiction cannot be granted.

In our letter of April 5, 1978 we requested that you advise the North Haven Connecticut Board of Education to submit the information requested on January 10, 1978. Your failure to do so leaves us no other alterna-

tive but to refer this case to the Office of the Regional Attorney for possible administrative enforcement.

Sincerely yours,

/s/ John G. Bynoe
JOHN G. BYNOE
Director
Office for Civil Rights
Region I

cc: Delio Rotundo
Superintendent of Schools

EXHIBIT "D"

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
Region I
140 Federal Street
Boston, Massachusetts 02110

Office For Civil Rights
(617) 223-6397

April 27, 1978

Ms. Susan K. Krell
Siegel, O'Connor & Kainen, P.C.
60 Washington Street
Hartford, Connecticut 06106

Complaint No. 01-77-0125

Dear Ms. Krell:

This is in response to your letter of April 24, 1978. In Mr. Bynoe's letter to you dated April 5, we submitted the information which you are requesting now.

For your information we are enclosing a copy of the regulations, and we have underlined the applicable sections. These procedures may be found on page 24144—Subpart F—Section 86.71 of the Federal Register (Nondiscrimination on the Basis of Sex) and on pages 6-11 of 45 CFR—Section 80.6 to 80.11 (Title VI Regulation).

I hope this information satisfies your inquiry.

I also want to inform you that this complaint file was referred to the Regional Attorney for possible enforcement proceedings on April 24, 1978. You may still avoid enforcement action by advising your client to submit the information as originally requested.

Our office wishes to work with you and your client in a harmonious way. If you have further questions in this matter, do not hesitate to call me.

Sincerely yours,

/s/ Maria C. Montalvo
MARIA C. MONTALVO
Chief
Elementary and Secondary
Education Branch
Office for Civil Rights
Region I

Enclosures

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. N78-165

NORTH HAVEN BOARD OF EDUCATION, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., ET AL., DEFENDANTS

ANSWERS TO DEFENDANT'S REQUEST FOR ADMISSIONS

Plaintiff, North Haven Board of Education, by its attorney Susan K. Krell, answers the request for admissions served upon it by Defendant on June 22, 1978 as follows:

Request No. 1: The North Haven School District has received, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it has used since July 1975, in whole or in part, to pay salaries of its employees.

Answer: The Plaintiff admits the matters set forth in this request.

Request No. 2: The North Haven School District has received, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it has used since July 1975, in whole or in part, to pay salaries of its teachers.

Answer: The Plaintiff admits the matters set forth in this request.

Request No. 3: The North Haven School District expects to receive either directly or through the State of

Connecticut, federal financial assistance administered by HEW which it will use, in whole or in part, to pay salaries of its employees.

Answer: The Plaintiff admits the matters set forth in this request.

Request No. 4: The North Haven School District expects to receive either directly or through the State of Connecticut, federal financial assistance administered by HEW which it will use, in whole or in part, to pay salaries of its teachers.

Answer: The Plaintiff admits the matters set forth in this request.

Request No. 5: The North Haven School District has received, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it has used since July 1975, in whole or in part, to pay either directly or indirectly for training of its employees.

Answer: The Plaintiff denies the matters set forth in this request.

Request No. 6: The North Haven School District has received, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it has used since July 1975, in whole or in part, to pay either directly or indirectly for training of its teachers.

Answer: The Plaintiff denies the matters set forth in this request.

Request No. 7: The North Haven School District expects to receive, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it will use, in whole or in part, to pay either directly or indirectly for training of its employees.

Answer: The Plaintiff admits the matters set forth in this request.

Request No. 8: The North Haven School District expects to receive, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it will use, in whole or in part, to pay either directly or indirectly for training of its teachers.

Answer: The Plaintiff admits the matters set forth in this request.

Request No. 9: The North Haven School District has received, either directly or through the State of Connecticut, federal financial assistance administered by HEW which it has used since July 1975, in whole or in part, to pay either directly or indirectly for education of its employees.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil No. N-78-165

NORTH HAVEN BOARD OF EDUCATION, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., ET AL., DEFENDANTS

DEFENDANT'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

1. Plaintiff North Haven Board of Education is charged with the responsibility of operating all of the North Haven public schools. Complaint ¶ 2.

2. The North Haven School District has received significant amounts of federal financial assistance which it has used to pay employees' salaries, including teachers' salaries. Answers to Defendants' Request for Admissions, Nos. 1-2. The approximate total dollar amounts of federal assistance received and a breakdown of how such funds were expended are set forth in Plaintiff's Response to Defendants' Interrogatories. An analysis of the figures provided therein indicates that during the 1977-78 school year, the school district received $111,564.00 of federal funds and used approximately 66.90% ($74,639.22) of this money to pay employees' salaries. In the 1976-77 academic year, approximately 46.79% ($40,664.00 out of $86,905.00) and in the 1975-76 year, approximately 53.95% ($51,393.42 out of $95,269.00) of the federal financial assistance received was used to pay salaries of North Haven's employees.*

---

* The total amount of federal funding received per school year is set forth in Exhibit A to Plaintiff's Response to Defendants' Interrogatories. The amounts allocated to "personnel" and/or "salaries" is set forth in Exhibits C, E, G, H, J, K, L, M, N, Q and R to *Id.*

3. North Haven expects to receive approximately $138,683.00 of federal financial assistance for the 1978-79 year, Exhibit A to Plaintiff's Response to Defendants' Interrogatories, and intends to use * 53.19% ($73,-768.00) of this amount to pay employees' salaries. Percentage based on figures provided in Exhibits T and V to *Id.* In addition, North Haven intends to use some of the federal funds to pay either directly or indirectly for training of its employees, including teachers. Answers to Defendants' Request for Admissions, Nos. 7-8.

4. As a recipient of federal monies, the North Haven School District is subject to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, (hereinafter "Title IX"), which prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance.

5. Pursuant to rulemaking authority to implement Title IX's substantive prohibitions, 20 U.S.C. § 1681, the United States Department of Health, Education and Welfare issued regulations effective July 21, 1975, published at 45 C.F.R. Part 86 (hereinafter "HEW Regulations"). The Regulations have the force of law; they are in final approved form and are currently in effect. Complaint, ¶ 11.

6. Subpart E of the HEW Regulations prohibits discrimination on the basis of sex against employees of recipient education institutions. 45 C.F.R. Part 86, Subpart E.

7. Under Section 902 of Title IX, 20 U.S.C. § 1682, HEW is empowered to investigate alleged violations of Title IX and to initiate enforcement proceedings if voluntary compliance cannot be secured. Complaint, ¶ 13.

8. By letter dated January 10, 1978, HEW notified the Superintendent of the North Haven Public Schools that a complaint had been received (Exhibit A to Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss or, in the Alternative, for Sum-

---

* Answers to Defendants' Request for Admissions, Nos. 3-4.

mary Judgment) alleging that North Haven had violated Title IX by discriminating on the basis of sex in hiring and other terms and conditions of employment including child care leave. Complaint, ¶ 14. The letter also advised North Haven that an investigation of the alleged violation would be conducted within specified timeframes. Accompanying the letter was a questionnaire requesting information about the school district's policies on hiring, leaves of absence, seniority and tenure. (The letter and questionnaire are Exhibit B to Plaintiff's Complaint).

9. North Haven has to date refused to comply with HEW's requests for information respecting the alleged violation, set forth in paragraph 7 above.

Respectfully submitted,

/s/ Barbara Allen Babcock
BARBARA ALLEN BABCOCK
Assistant Attorney General

/s/ Richard Blumenthal
RICHARD BLUMENTHAL
United States Attorney

/s/ Barbara B. O'Malley
BARBARA B. O'MALLEY

/s/ Judy Sello
JUDY SELLO

Attorneys, Department of Justice
Washington, D.C. 20530
Tel: (202) 739-3358

Attorneys for Defendants

Of Counsel:

Joseph S. Ackerstein
Assistant Regional Attorney
United States Department of Health, Education and Welfare
John F. Kennedy Federal Building
Boston, Massachusetts 02203

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. N78-165

NORTH HAVEN BOARD OF EDUCATION, PLAINTIFF

v.

JOSEPH A. CALIFANO, JR., ET AL., DEFENDANTS

PLAINTIFF'S STATEMENT OF MATERIAL FACTS

Plaintiff, by its counsel, submits this statement of material facts, pursuant to Rule 10(a)(3) of the Local Rules of Court. It is based upon the Complaint.

1. Plaintiff, North Haven Board of Education is an elected local Board of Education in the State of Connecticut duly constituted under the laws of the State of Connecticut which has received federal financial assistance from the Department of Health, Education and Welfare (hereinafter, "HEW") through the State of Connecticut for school years 1975-76, 1976-77, 1977-78 in amounts of approximately $95,269, $86,905, $111,212, respectively. These amounts include $24,307.50 for special education; $65,474 for children of low-income families; $14,188 for the Vocational Education Act.

2. In 1972, Congress passed the Education Amendments Act, 20 U.S.C. §§ 1681, *et seq.*

3. In 1975, HEW promulgated regulations to effectuate 20 U.S.C. §§ 1681, *et seq.* which regulations, *inter alia*, prohibit discrimination on the basis of sex in employment by any recipient of federal financial assistance, 45 C.F.R. Part 86, sub-part E.

4. By letter of January 10, 1978, the Plaintiff was notified by Defendant, John Bynoe, Director, Office for

Civil Rights, Region I, HEW, that a complaint had been filed against it alleging sex discrimination in hiring and other terms and conditions of employment, including child care leave in violation of 45 C.F.R. § 86.57(a)(12).

5. After receipt of a copy of the complaint, Plaintiff on February 7, 1978 requested HEW to dismiss the charge because HEW had no jurisdiction to regulate employment discrimination and those portions of its regulations purportedly promulgated to regulate employment discrimination were invalid, void and of no effect whatsoever. Plaintiff advised HEW that three U.S. District Courts had ruled to this effect in directly analogous cases.

6. The assistant regional attorney for HEW refused to dismiss the complaint and advised the Office of Civil Rights to pursue an investigation of compliance.

7. On April 27, 1978, Plaintiff was informed by the Defendants that the complaint was referred to the Regional Attorney for possible enforcement proceedings. The termination of federal financial assistance, as threatened would result in the elimination of, or at least substantial curtailment of, the programs for which federal financial assistance is used.

By: Siegel, O'Connor & Kainen, P.C.
Its Attorneys
Post Office and Office Address
60 Washington Street
Hartford, Connecticut 06016

By: /s/ Susan K. Krell
SUSAN K. KRELL

—and—

By: /s/ Donald W. Strickland
DONALD W. STRICKLAND

Hartford, Connecticut

August —, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B78-401

THE TRUMBULL BOARD OF EDUCATION, PLAINTIFF

vs.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, an agency of the United States of America and LINDA POTZ, DEFENDANTS

COMPLAINT

Plaintiff, The Trumbull Board of Education, by its attorneys, Cummings & Lockwood, complains against the above-named Defendants as follows:

1. Plaintiff is a local Board of Education duly organized under the laws of the State of Connecticut and operates the public school system in Trumbull, Connecticut.

2. Defendant United States Department of Health, Education and Welfare (hereinafter referred to as "HEW") is a duly organized and existing Executive Department of the United States.

3. This action arises under Article I and the Fifth and Fourteenth Amendments of the United States Constitution, and the Education Amendments of 1972, P.L. 92-318, Title IX, § 901, *et seq.*, 20 U.S.C. § 1681 *et seq.*, as amended, 5 U.S.C. § 701 *et seq.*, as amended, and 42 U.S.C. § 1988, as hereinafter more fully appears.

4. This is an action for an injunction and a declaratory judgment pursuant to 28 U.S.C. § 2201, as amended. The amount in controversy herein exceeds the sum of ten thousand dollars ($10,000), exclusive of interest and

costs. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

5. 20 U.S.C. 1681 [hereinafter Title IX, § 901] provides in relevant part:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, ..."

6. 20 U.S.C. § 1682 [hereinafter Title IX, § 902] provides in relevant part:

> "Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken . . . ."

7. Defendant HEW is a Federal Department within the meaning of said § 902 and has issued Regulations entitled "Final Title IX Regulation Implementing Educational Amendments Act of 1971 [*sic*] Prohibiting Sex Discrimination in Education". These Regulations appear at 45 C.F.R. Part 86, and are effective July 21, 1975.

8. Subpart E of said Regulations purports to prohibit discrimination on the basis of sex in employment and provides in relevant part:

> (a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor whether full-time or part-time, under any

education program or activity operated by a recipient which receives benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(b) Application. The provisions of this subpart apply to:

• • • •

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, and rehiring;

• • • •

(4) Job assignments, classifications and structure, position descriptions, lines of progression, and seniority lists;

• • • •

(9) Employer sponsored activities, including social or recreational programs; and

(10 Any other term, condition or privilege of employment."

9. Pursuant to complaint No. 01-77-0100 filed on or about October 5, 1977, with the Office for Civil Rights, Department of Health, Education and Welfare, Region I, Boston, Massachusetts, by Defendant Linda L. Potz, employed by Plaintiff as a High School Counselor, alleging sex discrimination in job assignments, working conditions, and non-renewal of contract, Defendant HEW purported to investigate whether Plaintiff was in violation of Title IX and Defendant HEW's Regulations implementing Title IX.

10. Despite Plaintiff's assertion that its actions concerning Defendant Potz were legal, Defendant HEW by letter dated September 20, 1978, a copy of which is attached hereto as Exhibit "A", found that Plaintiff had failed to comply with Section 86.51 of the Title IX Regulations, finding violations in job assignments, working conditions and non-renewal of contract, and finding that Plaintiff was therefore not in compliance with Title IX, § 901.

11. Having so found, as set forth more fully in Exhibit "A", Defendant HEW has demanded that Plaintiff submit a remedial plan for corrective action, which plan must include an offer to reinstate Defendant Potz to her former position at the proper salary level, and reimbursement of Defendant Potz for any loss in salary and other benefits since the date of her termination to the date of her reinstatement, and removal of all and any adverse materials from the personnel file of Defendant Potz relating to job assignments and working conditions found to violate Title IX of the Education Amendments of 1972.

12. Having so found, as set forth more fully in Exhibit "A", Defendant HEW has further demanded that Plaintiff give assurances to Defendant HEW on or before October 22, 1978 that Plaintiff will comply with said demands of Defendant HEW, failing which Defendant HEW has threatened Plaintiff with the institution of administrative enforcement proceedings. The commencement of said enforcement proceedings may lead to immediate suspension and ultimate termination of the Federal financial assistance presently extended to Plaintiff, pursuant to § 80.8 of the Regulations.

13. The total amounts of said Federal financial assistance to Plaintiff for the school years 1976-1977, 1977-1978 and 1978-1979 were substantial.

14. For the 1978-79 school year, the Federally-assisted programs include: Title I (pre-school preparatory and elementary school remedial reading programs); Title IV, (including project Achieve); and Title VIb,

(program for handicapped pupils). Said programs are of a continuing nature and, accordingly, are anticipated to extend into the 1979-80 school year and beyond.

15. The termination of said Federal financial assistance, as threatened, would result in the elimination or, at least, substantial curtailment of the above continuing programs which would inure to the detriment of the Plaintiff and cause irreparable harm to it and the citizens that it by law represents.

16. The foregoing threatened loss and harm to the Plaintiff and the Trumbull Public Schools arises out of the Defendant HEW's assertion and assumption of authority to regulate employment practices of the Plaintiff, pursuant to the Regulations allegedly based upon Title IX, §§ 901, 902.

17. Defendant HEW's adoption and issuance of Subpart E of said Regulations, and § 86.51 in particular, is in excess of the authority conferred by Congress upon Defendant HEW in Title IX, §§ 901, 902, for the reason that Title IX regulates and prohibits discrimination in Federally-assisted programs and activities solely in favor of the students and other persons who are the object and beneficiaries of said programs rather than to employees in general, such as Defendant Potz.

18. Defendant HEW's adoption and issuance of Subpart E of said Regulations, and § 86.51 in particular, confuses its jurisdiction with the jurisdiction conferred under Title VII, 42 U.S.C. § 2000e, granted to the Equal Employment Opportunity Commission to regulate unlawful employment practices and in particular alleged sex discrimination in employment practices.

19. Defendant HEW's adoption and issuance of Subpart E of said Regulations, and § 86.51 in particular, violates Article I of the United States Constitution, in that it is an unconstitutional infringement on the powers of Congress as contained therein.

20. Defendant HEW's adoption and issuance of Subpart E of said Regulations, and § 86.51 in particular,

violates the rights of Plaintiff secured by the Fifth and Fourteenth Amendments to the United States Constitution.

21. Defendant HEW's application of Subpart E of said Regulations, and § 86.51 in particular, to regulate the general employment practices of the Plaintiff which are applicable to employees engaged in a broad range of educational programs and activities, which are not Federally assisted, is in irreconcilable conflict with the express limitation of authority contained in Title IX, §§ 901, 902, *i.e.*, to regulate only those educational programs or activities receiving Federal financial assistance.

22. Defendant HEW's threatened termination of Federal financial assistance to Plaintiff, as a result of its findings that Plaintiff violated § 86.51 of said Regulations, is contrary to the Defendant HEW's Regulations, including, in particular, § 86.51(a) of said Regulations and is in excess of the authority conferred upon that agency by Congress, as such finding does not concern persons who have been the beneficiaries of or been subjected to discrimination under any educational program or activity receiving Federal financial assistance, as provided under Title IX, § 901.

WHEREFORE, Plaintiff demands the following relief:

a. A Declaratory Judgment that Subpart E of said Regulations and all actions and proceedings taken by Defendant HEW with respect to this Plaintiff pursuant thereto are invalid and void and of no effect whatsoever.

b. A Declaratory Judgment that Defendant HEW may not terminate Federal financial assistance to Plaintiff unless Defendant HEW finds, in accordance with Title IX, that Plaintiff's Federally-funded programs are in non-compliance with Title IX and valid regulations enacted pursuant thereto.

c. An Injunction enjoining Defendant HEW from requiring Plaintiff to comply with or otherwise giv-

ing effect to its demand letter dated September 20, 1978, and from engaging in any investigation of Plaintiff The Trumbull Board of Education pursuant to any complaint filed with Defendant HEW alleging discrimination against any employee of Plaintiff pursuant to 45 CFR § 86 Subpart E, and from making or attempting to make any finding that Plaintiff is in non-compliance with said Regulations, and from terminating or refusing to grant or suspending, or attempting to terminate, refuse to grant or suspend Federal financial assistance to plaintiff for any alleged non-compliance with said Regulations, and from failing to duly and normally process Plaintiff's applications for Federal financial assistance and from otherwise penalizing Plaintiff in any way for alleged non-compliance with Subpart E of said Regulations.

d. Costs and attorneys fees.

e. Such other and further legal and equitable relief as justice may require.

PLAINTIFF
THE TRUMBULL BOARD
OF EDUCATION

By /s/ Paul E. Knag
PAUL E. KNAG
Cummings & Lockwood
One Atlantic Street
Stamford, Connecticut 06904
(203) 327-1700

Dated: October 18, 1978

EXHIBIT A

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Region I
140 Federal Street
Boston, Massachusetts 02110

Office of Civil Rights
(617) 223-6397

September 20, 1978

Dr. Duncan Yetman
Superintendent
Trumbull Public Schools
6264 Main Street
Trumbull, Connecticut 06611

RE: Complaint No. 01-77-0100

Dear Dr. Yetman:

We have completed our investigation of the above referenced complaint filed by Linda Potz against your school district. The complaint alleged discrimination on the basis of sex in job assignments, working conditions, and non-renewal of contract. This has been a very lengthy investigation and we want to thank you for your patience and cooperation during this time period.

Based on the data gathered during our investigation, we have concluded that your district failed to comply with Section 86.51 of the Title IX Regulation which prohibits discrimination on the basis of sex in employment. Enclosed for your information is a complete summary of our findings. Specifically, we found violations in:

—job assignments
—working conditions
—non-renewal of contract

Compliance with the Title IX Regulation is sought by informal means whenever possible. We therefore solicit

your cooperation in taking remedial action responsive to the findings in this letter. To this end, within thirty days of receipt of this letter, the Trumbull Board of Education should submit to this office a plan for corrective action and a timetable for the implementation of the plan. Such plan should include:

1. An offer to reinstate Ms. Potz to her former position at the proper salary level.
2. Reimbursement of Ms. Potz for any loss in salary and other benefits since the date of her termination to the date of her reinstatement.
3. Removal of all and any adverse material from the personnel file of the complainant relating to job assignments and working conditions found herein to violate Title IX of the Education Amendments of 1972. (OCR should be furnished with a copy of such file for its review).

I wish to assure you of our full cooperation in assisting your school district in its resolution of this complaint. In the event that this matter cannot be resolved by informal means within ninety days from the date of this letter, formal enforcement action may be initiated by commencement of administrative proceedings or by other means authorized by law.

Under the Freedom of Information Act it may be necessary to release this document and related correspondence in response to inquiry.

If you have any questions or need technical assistance, please call Maria C. Montalvo, Director, Elementary and Secondary Education Division, at (617) 223-6397.

Sincerely yours,

/s/ John G. Bynoe
JOHN G. BYNOE
Director
Office of Civil Rights
Region I

Enclosure

SUMMARY

Complaint No. 01-77-0100

I. *Applicable Regulations*

The discriminatory acts cited in our letter violated Section 86.51 (45 CFR Part 86) of the Regulation implementing Title IX of the Education Amendments of 1972. The relevant portions of Section 86.51 are quoted below:

> (a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefore whether full-time or part-time, under any education program or activity operated by a recipient which receives of benefits from Federal financial assistance.
>
> (2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.
>
> • • • •
>
> (b) Application. The provisions of this subpart apply to:
>
> • • • •
>
> (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, and rehiring;
>
> • • • •

(4) Job assignments, classifications and structure, position descriptions, lines of progression, and seniority lists;

• • • •

(9) Employer sponsored activities; including social or recreational programs; and

(10) Any other term, condition or privilege of employment.

II. *Allegations*

The complainant alleged that from August, 1975 to July, 1977 she received different treatment in comparison to the two male counselors with whom she worked, which eventually led to the termination of her employment with the school system. She alleged that with the direction by and approval of Principal, Robert McCarthy, Madison Jr. High School, she was:

1. Required to run errands outside the building during the day, errands not related to counseling functions which necessitated cancellation of appointments with students.
2. Required to type—entailing days which should have been spent counseling.
3. Required to substitute in a business education classroom as a teacher over a period of seven weeks from one to two periods each week to save the cost of a substitute.
4. Arbitrarily moved to a barely heated "cubby hole" away from the suite of guidance officers near the gymnasium without any forewarning.
5. Subjected to supervisory comments by male counselors not in a position or with supervisory authority over her.

6. Given more responsibilities than her male counterparts i.e., training a guidance intern, meeting with private school representatives who visited the school.

7. Told to change a report because it showed she had seen more students than her male counterparts.

Ms. Potz also stated that in July of 1977 after a hearing at which numerous parents and teachers testified in her behalf, she was terminated from her employment.

In a later charge, Ms Potz alleged that she was prevented from attending teachers' meetings at Madison Junior High School.

III. *Findings*

Our investigation disclosed that the complainant was required to perform certain tasks which were not part of her duties as a guidance counselor and not required to be performed by the other male counselors with whom she worked. These tasks included running errands, typing, and substituting as a teacher in a business education classroom for a lengthy period of time. Given the circumstances under which such tasks were performed by the complainant, we cannot accept the district's justification that she "volunteered" for extra duties. The district's assertion that the male guidance counselors were assigned substitute teaching duties as often as the complainant were not substantiated.

Our investigation disclosed that the district discriminated against the complainant on the basis of sex by moving her office at the Madison Junior High School away from the offices of her male counterparts. The complainant was moved to a smaller, less comfortable office near the gymnasium

which suffered from lack of heat. The change had a demeaning effect on the complainant in the eyes of her co-workers and counselees. In this context, the administrative justification for moving the complainant which has been offered by the district appears inadequate. Moving the complainant because she spent only two days a week at Madison and because it was "unfair" for a social worker to remain in the less comfortable office was unjustified because the record indicates the district failed to explore other, less drastic alternatives.

Our investigation disclosed that the district violated Title IX by the manner in which it challenged a report by the complainant showing the number of counselees she had seen during a particular time period.

The information submitted to us indicates that the complainant was asked to change a report showing that she had seen 150 students in a given week because this number was so much higher than the number seen by her male counterparts and not because the number was incorrect.

The charge "subjected to supervisory comments by male counselors" was not investigated as we felt this to be a moot point. We also did not address ourselves to the issue of "given more responsibilities than male counterparts" in our findings, although the district's response was not discounted.

The allegation by the complainant that she was not allowed to attend teachers' meetings at Madison was not upheld. We felt that the district in requesting the complainant to attend meetings at Hillcrest instead, was reasonable since she was at Hillcrest when their teacher meetings convened.

Our investigation disclosed that the complainant's sex was the motivating factor in the district's de-

cision not to renew her contract. The record shows that the district hired the complainant in August, 1975 as a guidance counselor at Madison Junior High. She was the only female counselor. Ms. Potz alleges that Madison Principal McCarthy told her he would have preferred to hire a male counselor. His subsequent actions lend credence to this allegation of sexual animus. We note that at the time of events of this case, substantially all administrative leadership positions in the Trumbull School System were held by males.

During the second year of her employment, it was decided that she would split her time between two junior high schools in Trumbull, Madison and Hillcrest. The evaluation of the complainant's performance was shared by the two principals of Madison and Hillcrest, Mr. McCarthy and Mr. DiDonato, respectively.

Mr. McCarthy on March 25, 1976 recommended the complainant for renewal of her contract and a salary increment based on her performance evaluation from September 1, 1975 to February 3, 1976. Her contract was renewed on June 1, 1976 and immediately on June 17, 1976 an unsigned performance evaluation was handed to the complainant by Mr. McCarthy.

We cannot understand why if her performance was so detrimental to the school system he did not voice his concerns prior to March 1, 1976 and the signing of her contract. In addition, the budget difficulties the district was facing could have presented a good opportunity to get rid of undesirable or nonperforming teachers.

On the other hand, on January 1, 1977, Mr. DiDonato gave the complainant a favorable job performance evaluation and Mr. McCarthy refused to cosign it.

It appears that the Board based its decision not to renew the complainant's contract on allegations made against her by Mr. McCarthy without considering the opinion of the other principal sharing supervisory responsibilities.

Upon receiving her notice of nonrenewal of contract in February, 1977, Ms. Potz in a letter to the district dated February 26, 1977 requested a public hearing before the Board of Education. At this point in time, after several requests, Ms. Potz still did not have a statement of reason for the nonrenewal of her contract. Connecticut General Statutes require that upon request a teacher be provided a statement of reasons within five (5) days of notice of nonrenewal. It was almost two months before the complainant received a list of specifics for nonrenewal.

On the 29th of April the complainant's attorney was sent a list of eight specific reasons citing the Board's dissatisfaction.

Private hearings were held on June 9, 15, 29, and July 6, 1977. (The request for a public hearing was denied.) An attempt was made to get copies of the transcripts of the entire hearings from the district but due to their length, the district could not oblige our request. However, we did obtain copies of part of the transcripts from the complainant.

Based on our review of these transcripts, we found that teachers, parents, a doctor, and some students testified on behalf of Ms. Potz.

In Charge 1 (meeting with male school personnel) all of the personnel named either testified in person or sent letters denying the fact that they spent an inordinate amount of time with the complainant.

In Charge 2 (numerous personal telephone calls) it was brought out in the hearings that other personnel received and made personal telephone calls.

In Charge 3 (arranging an appointment for a minor female student to receive birth control pills) an affidavit from the student involved denying the charge was introduced.

In Charge 4 (failure to refer a potentially emotionally disturbed student to Pupil Services) the father of the student testified that the complainant handled the matter with his daughter in an "exemplary manner."

In Charge 5 (failure to refer to the school nurse or to any member of the administration a child who had slit her wrists) both the student involved in the charge and her mother voluntarily appeared on behalf of the complainant. The student admitted that the complainant was not around or was even aware of the incident at the time it occurred.

In Charge 6 (revealing to teachers at a PPT that a student had been arrested for suspected larceny and had been involved in drug abuse) the Board deleted the portion of the charge that said "had been arrested for suspected larceny" and did not include it in their deliberations. However, the charge of impropriety before the PPT was never clearly defined in the transcripts of the hearings that we had. General Statute 10-154(a) states that a teacher doesn't have to divulge any outside information with regard to drug abuse by a student at a PPT, but it does not say that a teacher *cannot* do so.

In Charge 7 (interfering with a school nurse who was attempting to treat a student overdosed on drugs or alcohol) a doctor testified that the school nurse had committed grave errors in the handling of the sick child.

Charge 8 (refusal to maintain student files) was not addressed in the copies of the transcripts we possessed but there were letters from co-workers attesting to the fact that Ms. Potz kept very good files.

The Board apparently did not give any weight to public support by parents, educators, students, and former employers. Letters attesting to the work performance and good character of the complainant were sent to this office, the school district, and the complainant.

It is our finding in the light of the evidence that the Board's announced reasons for non-renewal of Ms. Potz's contract were pretextual. In the absence of any other satisfactory explanation for the non-renewal of her contract, we conclude that sex bias was the responsible factor. Nothing presented to us suggests that the Board of Education would have failed to renew the contract of a male guidance counselor with a record comparable to that of Ms. Potz.

The evidence submitted to us points to the conclusion that the complainant was performing her duties and responsibilities adequately.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B-78-401

THE TRUMBULL BOARD OF EDUCATION, PLAINTIFF

vs.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE and LINDA POTZ, DEFENDANTS

May 4, 1979

PLAINTIFF'S OBJECTIONS TO DEFENDANT POTZ'S FIRST SET OF INTERROGATORIES TO PLAINTIFF

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff objects to defendant Potz's First Set of Interrogatories to Plaintiff as follows:

1. As to each of the following school years, state whether federal financial assistance was or is expected to be received by the Trumbull School District, either directly or through the State of Connecticut:

a. 1975-1976.

b. 1976-1977.

c. 1977-1978.

d. 1978-1979.

Objection to Interrogatory 1:

Plaintiff objects to defendant Potz's Interrogatory 1 because the United States District Court, Burns, J., has now ruled in the matter entitled *North Haven Board of Education* vs. *Califano, et al.* (Civil No. N-78-165, April 26, 1979), which case presents the identical issue of law which is dispositive in this case, and that on the basis thereof the plaintiff has moved for summary judgment, which motion would be dispositive of all issues in this case and renders discovery irrelevant.

2. If the answer to Interrogatory 1 is in the affirmative, state, as to each school year designated, the following:

a. Each and every type of federal financial assistance received;

b. The federal agency administering the assistance (whether the Department of Health, Education and Welfare (HEW) or another agency);

c. The statutory authority for the funds received or expected to be received;

d. The dollar amount received or expected to be received under each statute for each year;

Objection to Interrogatory 2:

See objection to Interrogatory 1.

3. Identify each and every particular program and function to which the federal financial assistance was allocated for each year designated above (including, but not limited to, the amounts allocated to equipment, supplies, remedial reading, payment of salaries of school district employees, including teachers; training of teachers, recertification of school employees, research-type grants to school district employees, and special education programs) and identify the dollar amount of such assistance allocated for each program or function.

Objection to Interrogatory 3:

See objection to Interrogatory 1.

THE PLAINTIFF
THE TRUMBULL BOARD
OF EDUCATION

By: /s/ Paul E. Knag
PAUL E. KNAG
Its attorney
Cummings & Lockwood
One Atlantic Street
Stamford, Connecticut 06904
(203) 327-1700

CERTIFICATION

This is to certify that a copy of the foregoing Objections has been mailed, postage prepaid, to all counsel of record this 4th day of May, 1979.

/s/ Paul E. Knag
PAUL E. KNAG

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B-78-401

THE TRUMBULL BOARD OF EDUCATION, PLAINTIFF

vs.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE and LINDA POTZ, DEFENDANTS

May 4, 1979

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff, The Trumbull Board of Education, hereby moves for summary judgment and respectfully requests that the Court enter an order, in the form attached (which is substantially identical to the judgment entered by this Court in *North Haven Board of Education* vs. *Califano, et al*), ordering and adjudging as follows:

1. That summary judgment be entered in favor of the plaintiff;

2. That the regulations set forth in 45 C.F.R. §§ 86.51-86.61, inclusive, be declared invalid, void and of no effect whatsoever; and

3. That the defendants, their agents, employees, and persons acting in concert or participation with them be permanently enjoined from terminating or refusing to grant, or attempting to terminate or refuse to grant, fed-

eral financial assistance to plaintiff for any alleged non-compliance with said regulations.

Respectfully submitted,
THE PLAINTIFF
THE TRUMBULL BOARD
OF EDUCATION

By: /s/ Paul E. Knag
PAUL E. KNAG
Cummings & Lockwood
One Atlantic Street
Stamford, Connecticut 06904
(203) 327-1700

CERTIFICATION

This is to certify that a copy of the foregoing Motion has been mailed, postage prepaid, to all counsel of record this 4th day of May, 1979.

/s/ Paul E. Knag
PAUL E. KNAG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil No. B-78-401

THE TRUMBULL BOARD OF EDUCATION, PLAINTIFF

v.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, ET AL., DEFENDANTS

FEDERAL DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The issue presented in this case, whether Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, authorizes the defendant Department of Health, Education and Welfare (HEW) to promulgate and enforce regulations, 45 C.F.R. §§ 86.51-86.61, prohibiting sex discrimination against employees of educational institutions receiving federal financial assistance, has already been decided by this Court in *North Haven Board of Education* v. *Califano, et al.*, Civil No. N-78-165 (D. Conn., April 24, 1979).

Because HEW's views as to the scope of its authority under Title IX were fully presented to the Court in *North Haven*, there is no need and hence HEW does not intend to file an additional brief in this case.

Respectfully submitted,

By: /s/ Barbara Allen Babcock
BARBARA ALLEN BABCOCK
Assistant Attorney General

By: /s/ Richard Blumenthal
RICHARD BLUMENTHAL
United States Attorney

By: /s/ Hugh W. Cuthbertson
HUGH W. CUTHBERTSON
Assistant United States Attorney

FILED
MAY 10 12 44 PM '79
CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THE TRUMBULL BOARD OF EDUCATION, Plaintiff	CIVIL ACTION NO. B 78-401
vs.	
UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE	
and	
LINDA POTZ,	
Defendants	MAY 7, 1979

MOTION TO COMPEL ANSWERS TO PLAINTIFF'S INTERROGATORIES OF DECEMBER 29, 1978

Pursuant to Rule 37 F. R. Civ. P., Defendant Linda Potz respectfully moves this Court for an order compelling the Plaintiff Trumbull Board of Education to answer Paragraphs 1 through 3 of Defendant Potz's First Set of Interrogatories to Plaintiff.

Such an order is sought to enable the Plaintiff to present an adequate factual background to support a motion for summary judgment and, if necessary, to present an adequate factual record for review of this action on appeal. The information requested is relevant and material to the issues raised by the Plaintiff's complaint.

FILED
Mar 24 4 15 PM '79
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B 78-401

THE TRUMBULL BOARD OF EDUCATION, PLAINTIFF

vs.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE and LINDA POTZ, DEFENDANTS

June 22, 1979

MOTION FOR SUMMARY JUDGMENT OF DEFENDANT LINDA POTZ

Pursuant to Rule 56 F.R.Civ. P., Defendant Linda Potz hereby moves for summary judgment and respectfully requests that the Court enter the attached order, which is sought on the following grounds:

1. The Plaintiff, Trumbull Board of Education is an educational institution which in 1975-76, 1976-77, 1977-78 and 1978-79 received federal financial assistance;

2. Pursuant to an administrative complaint filed by Defendant Potz, the Office for Civil Rights of the United States Department of Health, Education and Welfare (HEW) investigated and made findings of violations of Title IX of the Education Amendments of 1972 by the Plaintiff, Trumbull Board of Education;

3. As a result of its investigation, HEW concluded that the Plaintiff had committed multiple violations of Title IX and of HEW regulations effectuating the statute. The violations are set forth in Exhibit A attached hereto;

4. On September 20, 1978, HEW issued a directive ordering the Plaintiff to put itself into compliance with

Title IX by submitting a plan for corrective action which was to include reinstatement of Defendant Potz to her employment with back pay and removal of any and all adverse materials from Defendant Potz' personnel file. (See Exhibit A);

5. The Plaintiff has refused to comply with HEW's directive and, to date, has not reinstated Defendant Potz to her employment;

6. HEW's directive is a valid administrative order which must be obeyed by the Plaintiff.

WHEREFORE, summary judgment should enter on behalf of Defendant Linda Potz.

DEFENDANT, LINDA POTZ

By: /s/ Beverly J. Hodgson
BEVERLY J. HODGSON
Koskoff, Koskoff & Bieder, P.C.
1241 Main Street
Bridgeport, Connecticut 06604
(203) 336-4421

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, to Attorney Paul Knag, Cummings & Lockwood, One Atlantic Street, Stamford, Connecticut 06904 and Attorney Kathy Olesker, U.S. Department of Justice, Civil Division, 10th and Pennsylvania Avenue, N.W., Room 3513, Washington, D.C. 20530 on the above-mentioned date.

/s/ Beverly J. Hodgson
BEVEBLY J. HODGSON

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B 78-401

THE TRUMBULL BOARD OF EDUCATION, PLAINTIFF

vs.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE and LINDA POTZ, DEFENDANTS

June 20, 1979

AFFIDAVIT OF LINDA POTZ EVANKO

Defendant LINDA POTZ EVANKO submits the following affidavits in support of her Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and of her Motion for Summary Judgment.

LINDA POTZ EVANKO, being duly sworn, deposes and states:

1. I am a defendant in this action;
2. I have personal knowledge of the facts set forth in this Affidavit;
3. From August, 1975 to June, 1977, I was employed as a junior high school guidance counselor by the Trumbull Board of Education;
4. During the second year of my employment, my time was divided between two junior high schools;
5. At both junior high schools, all the other guidance counselors were male; and I was the only female guidance counselor at the junior high school level in the Trumbull Public Schools;

6. During my employment, female students who were assigned to the male guidance counselors often came to see me instead. During these counseling sessions, they raised problems of female physical development, social problems or other concerns which they said they could discuss more comfortably with me.

7. In many instances, female students effected informal transfers to me and away from the male guidance counselor to which they were assigned. In many more instances, female students sought me out for discussions of gender-related problems in addition to their regular counseling appointments with the male guidance counselor to which they were assigned;

8. As a result of counseling sessions with female students who were not assigned to me, I saw and counseled more students than did my male colleagues;

9. When my employment was terminated, a male was hired to fill my position at Madison Junior High School;

10. My training as a guidance counselor indicates, and my experience as a guidance counselor in the public schools of Bridgeport and Trumbull confirmed, that female students are often reluctant to discuss gender-related problems with counselors of the opposite sex and that a guidance staff should include both male and female counselors in order to be able to meet the counseling needs of the whole student body in coeducational schools.

/s/ Linda Potz Evanko
LINDA POTZ EVANKO

Sworn to and subscribed before me this 19th day of June, 1979.

/s/ _____
Commissioner of the Superior Court

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 353280 602